



Paper No. 4

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AUG 05 2002

In re Application of
Ronald E. Gilbert et al.
Application No. 10/047,198
Filed: October 26, 2001
Attorney Docket No. PY2-023

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: OFFICE OF PETITIONS
: DECISION DISMISSING
: PETITION
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This is a decision on the petition filed April 17, 2002, in response to the Notice of Omitted Items, requesting that page 6 of 8 (figures 11 and 12) of the drawings be accepted as having been filed with the original application.

On October 26, 2001, the application was filed.

On March 29, 2002, the Office of Initial Patent Examination (OIPE) mailed a Notice of Omitted Items in a Nonprovisional Application stating that the application had been accorded a filing date of October 26, 2001, but that, *inter alia*, Figures 7, 11 and 12 described in the specification appeared to have been omitted from the application.

In response, on April 17, 2002, the present petition was filed. Petitioners argue that due to misnumbering, there was in fact no figure 7 and that figures 11 and 12 which can be found on page 6 of 8 were in fact included. Therein, petitioners argue that a complete application was present on October 26, 2001, for filing date purposes. Petitioners point to their postcard receipt and the itemized transmittal letter as evidence that 8 pages of drawings including page 6 (figures 11 and 12) was among the application papers filed on October 26, 2001. Petitioners request that the application be accorded a filing date of October 26, 2001, with Page 6 as a part of the original disclosure.

The argument and evidence supplied with the petition have been carefully considered, but are not persuasive. The USPTO has a well-established and well-publicized practice of providing a receipt for papers filed in the USPTO to any applicant desiring a receipt. The practice requires that any paper for which a receipt is desired be filed in the USPTO with a self-addressed postcard identifying the paper. A postcard receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO. See section 503, Manual of Patent Examining Procedure (MPEP 503).

Unfortunately, in this case, petitioners' postcard receipt is illegible and therefore cannot serve as proof of the contents of the application package filed October 26, 2001 or whether it is date stamped by the USPTO, which is the purpose of the post card receipt. The application transmittal letter is, at best, only evidence of what was intended to be filed, not evidence of what was actually received or filed in the USPTO. Finally, the Office considers the date the paper or fee is shown to have been deposited in "Express Mail" to be the "Date-in" on the Express Mail label. That is the date that verifies that the package was actually mailed. In this instance, the only purpose for petitioner to submit the express mail label would be to show that the application was deposited and received in the USPTO but, the contents of that package cannot be ascertained.

The petition is dismissed.

The copy of Page 6 (figures 11 and 12) supplied with the present petition will not be used for processing or examination, but will be retained in the application file. Petitioner may file Page 6 as a preliminary amendment. If Page 6 is filed as a preliminary amendment, the amendment will be reviewed for new matter.

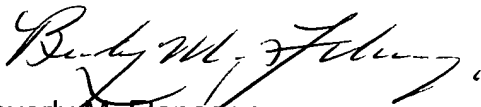
As this petition was necessitated by applicants' filing error rather than an error on the part of the Office, the petition fee will not be refunded.

The application is being returned to Initial Patent Examination Division for further processing with a filing date of October 26, 2001, using the application papers filed on that date.

Telephone inquiries concerning this matter may be directed to Petitions Attorney Patricia Faison-Ball at (703) 305-4497.



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